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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 206

NOEL ESTATE, INCORPORATED AND
THOMAS G. ROBERTS, Petitioners

vs.

JAMES R. RUSSELL, STOCKHOLDERS'
AGENT OF THE COMMERCIAL NATIONAL
BANK OF SHREVEPORT, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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LECOMTE, SHREVEPORT, LOUISIANA

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To The Honorable the Supreme Court of the United States:

OPINIONS BELOW

The Fifth Circuit Court of Appeals, on February 18, 1955, rendered its opinion PER CURIAM, before two Judges, the third member being recused as having delivered the opinions while sitting as District Judge below, and who was temporarily serving in the appellate court, sustaining without reasons therefor, the judgment appealed from. The first Opinion in District Court is

recorded at Page 579, et seq, Record (not officially reported), the second Opinion, on application for New Trials, Page 617, et seq. R., reported at 114 F. Supp. 614, *In Re Commercial National Bank of Shreveport, Louisiana.* Since 9 additional copies of the Record prepared for the Courts below are being submitted with this application, copies thereof are not being appended hereto (Par. 4, Rule 21).

JURISDICTION FOR WRIT

The Judgment sought to be reviewed is that of the Fifth Circuit, dated February 18, 1955, entered as of that date, application for rehearing denied by said Court on April 6, 1955, the entry date (R. 676, 691); reported, 218 F (2nd) 958.

The Fifth Circuit Court of Appeals,, by adopting the Opinions of the District Court, has decided an important question of Federal law which has not precisely been, but should be, settled by this Honorable Court.

Alternatively, the Fifth Circuit has decided questions of general corporate law in conflict with settled jurisprudence of this Court and other Courts of Appeal.

By adopting the Opinions below and refusing application for New Trials, the Fifth Circuit has sanctioned a departure from the usual and accepted procedure, as to require the exercise of this Court's power of supervision.

QUESTIONS PRESENTED FOR REVIEW

The primary question for review is the abuse of the District Court's discretion in refusing a stockholder of a National Bank in voluntary liquidation, reasonable reimbursement for expenses paid (and obligations incurred) to agents (Investigators and Attorneys) who performed valuable and onerous services which redounded to the admitted benefit of all the shareholders, in establishing rights and credits against another National Bank, which had, by contract, secured all assets and credits of the former, the merits of claims against the latter bank being of a fiduciary nature, litigation to establish same being in the Federal courts, the maxims and principles of equity, as established by the Federal courts, controlling; the precise question being presented whether the claims of applicants herein in establishing those rights, should be tested by the maxims and principles of Federal *equity* jurisprudence, rather than by state or federal *law*.

The Fifth Circuit has denied a stockholder reasonable attorneys' fees and costs, against a fund created by the sole efforts of said stockholder and his agents, amounting to $15,000.00, in opposing two proposed sales of Appellee Bank's assets at inadequate prices, the oppositions being sustained by the Federal District Court and upset prices secured in the mentioned amount, made available thereby for the benefit of all the shareholders.

The subsidiary question involved is whether claims made direct in District Court by agents of stockholder Noel Estate, Inc., (attorneys and other agents) for reason-

able value of services, which were denied, may be covered in appeal by stockholder in Fifth Circuit, that Court permitting Noel Estate to bring up pertinent data and Exhibits involved in agents' claims to be considered in the appeal.

A question of general law, alternatively, is presented, by authorizing Chairman Moore's personal claims for expenses advanced which were shared with stockholder Noel Estate, and denying any reimbursement to said shareholder.

A serious and fundamental question of a litigant's rights to a New Trial is presented for Review by virtue of the District Judge leaving the bench to catch a train while Applicant's witnesses were testifying and before their testimony had been completed, the President of Noel Estate stating, on Motion for New Trials, (and there is no contradiction) that he could not get his attorney to object to the Judge leaving the bench; that his attorney failed and refused to complete their case, refusing to put on all their evidence; the first decision by the Court was rendered without the benefit of the transcribed testimony.

FACTS PERTINENT TO PRESENT QUESTIONS INVOLVED

On December 3, 1932, the Commercial National Bank *of* Shreveport (Appellee Bank, hereafter referred to as the Old Bank) agreed by contract to go out of business as a national bank, turning all its assets for liqui-

dation over to the Commercial National Bank *in* Shreveport (a new national bank hastily formed for the purpose and hereafter referred to as New Bank). The old bank's stockholders appointed a Stockholders' Committee of three members with R. T. Moore as Chairman, with authority to do all acts necessary in their behalf to accomplish the liquidation and work with the new bank to that end (R. 579-583). The District Court found that the Committee was with power to do such things as were reasonably necessary to carry out the terms of the contract, "including the employment of counsel and other agents which the conditions required." (R. 585, L23-25, 586, L 1). No meetings were formally held by this Committee (R 275 L 17). Mr. Moore, Chairman, told the other members what he had done and they always approved (275 R L 24; 288 L 23). In December, 1937, Chairman Moore, Mr. Noel, the then president of Noel Estate, Inc., and T. G. Roberts, met and discussed legal arrangements to have an action started to set aside the contract of liquidation between the two banks, the decision being to engage S. W. Plauche, Sr., at Lake Charles, La., the retainer fee of $1,500.00 being agreed upon and the petition prepared (copy of which is in the Record at Pages 40-84, showing detailed information supplied to said attorney by Roberts) but never filed upon decision of Moore; Noel Estate paying one-half the retainer fee of $750.00 and Moore advancing the other half (R 96, L 19-25; 97, L 1-8). The District Court approved Moore's personal claims, inclusive of this retainer fee, but denied Noel Estate's claim for the same purpose (L 22, et seq, Page

240; shown on Moore's detailed statement filed in the record and sent down to Fifth Circuit as an Exhibit, by Order of that Court), and Roberts' claim, which included furnishing of data and trips to Lake Charles.

Judge B. C. Dawkins, Sr., the trial judge in all the litigation between the two banks and the claims involved herein, found in the main litigation, page 975, 72 Fed. Supp. 961, *Connolly, etc. v. New Bank*, that personal feelings between Moore and Murrell, who spearheaded the formation of the New Bank,

> "**created a personal feeling between these two individuals, which caused both to lose sight of their responsibilities to the stockholders of the old bank and that it was principally for this reason that a receiver was sought."

The District Court further found that the New Bank personnel had the inside track with the Comptroller's office and were instrumental in having a close personal friend of Murrell's appointed one of the Receivers, Paul M. Brown; that the receivers appointed were mere figureheads of the New Bank and did their bidding (same decision, supra, R 586 L 1-11). He further found that Brown devaluated assets of the Old Bank in an apparent effort to cooperate with the New Bank in its attempts to buy all the assets, and in seeking an assessment against all the old stockholders to make up the deficit in alleged value of the assets and the proposed purchase price (same decision, supra).

In 1937, Receiver Brown proposed to sell the Old Bank's building, and fixtures, for $350,000.00, to the New Bank, which sale was opposed by W. K. Henderson, acting on authority of stockholder Noel Estate and others, which furnished attorney's fees to Henderson; Noel Estate being the only member which advanced money for the purpose, Mr. F. J. Looney, attorney handling, which opposition was sustained by Judge Dawkins. Subsequently, Brown again proposed to sell these assets to the New Bank for $355,000.00, which sale was opposed by Noel Estate, Inc., as one of the petitioners, hiring Dickson & Denny, attorneys, to handle, permitting White, Holloman & White, attorneys, to intervene on behalf of another minor stockholder, and the opposition was sustained by the Court. These same assets brought $365,000.00, which was held for distribution to all the stockholders. Moore sat idly by, made no objection to the interventions of the named stockholders and there was no objection by Receiver Brown to the procedure of these shareholders, as not properly in Court representing the Appellee's interests. (90 R, L 14, et seq.; R 343, et seq; 359 L 3, et seq; Judgment of Court sent down as an Exhibit).

Moore joined with Noel Estate in its effort to set aside a receiver's sale of valuable stock, an asset of the Old Bank, in that he paid half the attorney's fee and costs and Noel Estate paid half; F. J. Looney, attorney, handling (Edson Realty Co. v. New Bank, 29 Fed. Supp. 22; R 96 L 17, et seq; 622 L 16, Opinion of the Court; R. 105, detailed statement of Noel Estate).

Moore joined eventually with the minority stockholders in Noel Estate's efforts, through W. K. Henderson, to have access to the records of the liquidation performed by the New Bank, in Equity Suit No. 786, sent down to Fifth Circuit as an Exhibit (97 L 9).

Chairman Moore requested of the receiver the bringing of a suit for an accounting against the New Bank, which was refused by the Comptroller. He then entered suit independently of the Receiver, hiring Attorney J. Fair Hardin to prepare and file the petition. When this was done, the Comptroller relented, hired attorneys, Hall and Lemann; requested the dismissal of the stockholders' suit, which was granted. After the Receiver entered suit for this accounting, Chairman Moore intervened on behalf of the stockholders, the District Court permitting the action in view of its finding that the Comptroller's office had evidenced a hostile attitude toward the Old Bank. The intervention decree was appealed, which action was sustained (586 R, L 15, et seq). Moore next hired Attorney Barksdale to handle its interests in this main litigation between the two banks, following the demise of Hardin; hired Otis W. Bullock, as principal counsel and Plauche & Plauche, upon the disability of Barksdale. Mr. Bullock conducted the investigations, depositions and trials as chief counsel, cooperatively with the Receiver's attorneys, which litigation extended over a period of some ten years, finally ending in June, 1951, *Connolly, etc. v. New Bank*, 189 F (2nd) 608. The pertinent decisions of the District Court and Court of Appeals

showing litigation involved between the two national banks, are contained in a printed volume, forwarded as part of this application.(*)

W. K. Henderson was authorized by Noel Estate, Inc., and other minority stockholders, to represent them in investigating the circumstances of the formation of the New Bank, fighting against the appointment of a Receiver for the Old (472); in opposing a proposed assessment by the Comptroller (134-136; 72 F Supp. 969 Par. 2; bound volume of decision, pages 102, 103; R 586, L 7, et seq); in thwarting the efforts of the New Bank to take over assets of the Old (R 87, 88, 138; 454). The suits in which he participated have been introduced in the Record. They were aimed at benefit to all the shareholders. (R132-140; 451-477; W. K. H. Exhibits 1-15; Seufert, et al v. Commercial National Bank in Shreveport, 16 F. Supp. 871; Henderson v. Brown, 20 F. Supp. 522; Edson Realty Co. v. New Bank, 29 F. Supp. 22). He started his activities in November, 1934, ending September, 1939, due to a stroke, which resulted in his death (R 36, 137).

Thomas G. Roberts started his activities first by association with Henderson, July, 1935, continued until September, 1939. Upon Henderson's disability, Roberts

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(*) Leslie, Receiver, etc. v. New Bank, 28 F. Supp. 927; Rawlings, etc. v. New Bank, 44 F. Supp. 5; New Bank v. Parsons, etc., 144 F (2nd) 231; Same title, Rehearing, 145 F (2nd) 191; Parsons, etc. v. New Bank, 64 F. Supp. 888; Connolly v. New Bank, 72 F Supp. 961; New Bank v. Connolly, etc., 176 F (2nd) 1004; Same title, Rehearing, 177 F (2nd) 514; Connolly, etc. v. New Bank, 89 F. Supp. 976; Same title, 80 F. Supp. 264.

made an agreement with Noel Estate, Inc., to continue his activities upon their promise to advance him $250.00 per month as a loan, which was done, enabling him to serve the interests of all the stockholders (R 90; 366 L 19, 369 L 20, 401, 402 L 21, 403, 404). His services are admitted by Appellee in Brief filed in Fifth Circuit, the defense being that he was "hired" by Noel Estate, Inc., a substantial stockholder of the Old Bank, and he should look to Noel Estate for payment. He started serving Appellee's specifically hired attorneys and other agents, with Mr. Plauche, Sr., making several trips to Lake Charles, La. (96 L 19, et seq; 97 L 1-8); prepared the data for the attorneys who opposed proposed sales by Receiver Brown (36 L 19, et seq, uncontradicted); continuously aided Mr. Hardin (37, 371); similar services to Mr. Barksdale (437); Mr. Looney (37 L 9, 375); rendered "invaluable" aid to Mr. O. W. Bullock (R 440) by interviewing witnesses, aiding in taking deposition in Shreveport, Dallas, Washington (95, 440 L 8), searching records for him (441); in brief, preparing the case and hearings for trial in the main litigation (R 441, L. 13; 448-450).(**)

(**) "He attended the taking of all the depositions in all of the places that we took them, and he rendered considerable assistance in the taking of these depositions by furnishing us information upon which we could predicate our questions to witnesses. He had a thorough knowledge of the reports of the various bank examiners, and the financial structure of the old bank, which was invaluable to us in preparing for the trial of the case, and in the taking of the depositions, and questioning witnesses during the trial and during the taking of the depositions." (R 440 L 10, et seq).

Rendered similar assistance to the Receiver's attorneys (442 L 2-10); continuously worked with Receiver Leslie (R 416-419); contact man, at Moore's request, between Auditor Heard and Attorneys (275 L 3-7, 371 L 14-24, 426 L 8-12). Roberts had the necessary business experience to recognize, in the course of his investigations, evidence overlooked, or withheld deliberately, by a wave of Auditors and Receivers, a breach of trust practice attempted by the New Bank in the handling of the Tax Saving feature, which eventually netted for the benefit of all the stockholders, $356,829.53 (R 26, 33, 34, 98, 99; acknowledged by the Court, 455, L. 6); assisted Chairman Moore in Washington in presenting their complaints to the Comptroller (310 L 1-14).

Henderson kept all the stockholders advised of his and Roberts' activities by letters and radio addresses (473 L 8-13). He let it be known that they expected payment for any beneficial results obtained (563 L 17-23). Roberts, called under cross-examination in the main litigation by counsel for the New Bank, was asked if he had not previously stated he intended to make claim against all the stockholders, which he acknowledged, outlining his reasons why he thought he was entitled thereto, for his services. He followed Chairman Moore on the stand, stating his financial arrangements with Noel Estate, to enable him to continue in the case over 11 years, in which he was solely and continuously occupied (93 L 15, et seq; 473 L 10, et seq; 475; Lines 20, Page 483, to Line 16, Page 485, Excerpts from Testimony taken in Suit 83, the Main Litigation, sent down to Fifth Circuit as an Exhibit, by Order

of that Court, showing Roberts' testimony as stated above). No one ever protested Henderson's or Roberts' activities (407 L 10, 408, 409, 410, 491, 492). Chairman Moore testified that he had no hiring agreement with Roberts but because he understood Roberts was "working for" Noel Estate, his services were theirs to use and they used him continuously, "***and he was ready to respond at any time." (R 433 L 3-8). *No defense of gratuity has ever been made or suggested in this case, against any of the rejected claimants.* We have alleged in the Court of Appeals that upon the granting of a new trial, claimants can show that Mr. Moore started repaying a personal debt to Noel Estate before it was legally due in order to help provide funds for Roberts to continue his activities for all the shareholders' benefit.

Noel Estate's claim is for actual money expended in an agreement with W. K. Henderson to finance activities thought to produce beneficial results for all the shareholders, checks being issued for most of the amount direct to the agreed upon recipient, as shown by their bookkeeper, and itemized at Page 105, Record. Roberts was to repay his advances out of the recovery (403 L 6 et seq). That their trial lawyer did not connect these amounts up more closely with objectives, forms one of the basis for their president's testimony on motion for new trial that their attorney failed to complete their case. Mr. Looney, attorney, was present and could have easily explained all the amounts shown on the statement to connect it up with their claim, if called upon (451 L 21).

Henderson's prior death made difficult the accurate assemblage of his actual records (113 L 24; 484 L 9-22; 485 L 15-20).

Attorneys Dickson & Denny, and White, Holloman & White made direct claim for the reasonable value of their services in handling the opposition to sale of assets at inadequate prices by Receiver Brown (343 L 3-25; 350 L 20-25; 351 L 1-4). Noel Estate hired Dickson & Denny, and permitted the other firm to intervene and they conducted the suit cooperatively, which was successful (359 L 3-13).

In order to save time and expense of each rejected claimant who entered the case through agency with Noel Estate, Inc., of perfecting an appeal bond, etc., Noel Estate made a Motion in the Fifth Circuit asking that their appeal be expanded to cover the claims of Henderson Estate, and the rejected attorneys, and to that end that the Court order up, as Exhibits, all pertinent material and exhibits introduced below, to be made part of the Record on Appeal, to consider the point. The Motion was granted. An Order will be requested of the Fifth Circuit to forward the originals to this Court in conjunction with this application, to perfect the record.

Alternatively, New Trials were requested, based on serious charges made as to procedure below. At Page 486, Lines 13-16, Record, appears this notation by the official reporter:

> "At this time the Judge announced that he had to catch a train to go to his home at Monroe, Louisiana, and instructed the attorneys to proceed to complete the taking of the testimony on these claims, which he would read later."

The Noel Estate's claim was being presented at that time. The first Opinion was rendered in Chambers at Monroe, Louisiana, December 11, 1952 (594 L 20-21). The testimony was not available to the Court until May 15, 1953 (P 494 L 17-25). The Court necessarily did not have the benefit of the favorable testimony, as an example, of R. O. Roy, the only witness called on direct examination by the opposing stockholders, who stated, on cross-examination, that he knew of the activities conducted by the rejected claimants and made no objections; that he knew Roberts did a lot of work on the case but he objected to the size of the claim; that he should be paid what he was entitled to be paid. "In other words, he should be paid something from the pot." (492; 493 L 1). In application for New Trial, Noel Estate called attention to these irregularities (598, 599), bolstered by the testimony of the then president, James Noel (608); that their case had not been presented properly, or completed; that their then attorney failed to object to the judge leaving the bench and could not have heard or properly considered their case (608); that Mr. Moore had not been pressed for a more complete explanation of the relationship and working agreements with their agents (609, 610 R).

BASIS FOR ORIGINAL JURISDICTION OF FEDERAL COURT

At the end of the litigation between the two national banks involved, Appellee Bank recovered a substantial sum in judgment, representing an accounting of its trust in handling all the assets of the Old Bank. The Appellee was in voluntary receivership. The costs of the Receivership were ordered paid by the Comptroller of the Currency, the balance of over $600,000.00, was turned over to Appellee, after calling a meeting for that purpose in accordance with the Act of Congress covering the circumstances here. 12 USCA Sec. 197, et seq., under The National Banking Act. A Shareholders' Agent was elected at said meeting, James A. Russell. Claims for services growing out of the Liquidation and Litigation were presented to Mr. Russell, for payment out of the fund recovered. At the District Court's direction, the Agent turned the money over to the Court with the request that he be advised as to the validity and amount of the various claims presented (162 et seq). Oppositions were filed by certain stockholders as to payment out of the fund, however, this objection was overruled and acquiescence given to payment of all allowed claims (R 17-20; 649 L 10, 579, et seq). Additionally, 28 USCA Sec. 1348, grants original jurisdiction to U. S. District Courts of any civil action commenced by the United States, or by direction of any officer thereof, against any national banking association, or any civil action to wind up the affairs of any such association.

AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF WRIT

The Opinions below, in rejecting the claims involved, decided an important question of Federal law, contrary to established jurisprudence of this Court, for reasonable expenses of *attorneys* and *agents* allowed to a bondholder of a corporation under similar circumstances. As far back as 1882, this Court decided *Trustees of the Internal Improvement Fund of the State of Florida v. Charles P. Greenough*, 105 US 527, 538, 26 L ed 1157. One Vose, a bondholder hired *attorneys and other agents* to investigate promiscuous sales of land the income from which was dedicated to the payment of corporate bonds. For over 11 years he conducted investigations of sales of millions of acres, brought suits to, and did recover, substantial amounts for application on the debt of all the bondholders. He asked to be reimbursed for a) reasonable attorneys' fees, b) Agents' fees who investigated the fraudulent sales, c) Miscellaneous necessary expenses, d) his personal services, and e) personal expenses for hotels and train fares, for himself. The Court granted reasonable expenses for a), b), c), rejecting d), and e), payable out of the fund discovered, created, preserved and recovered, by one for the benefit of many, before distribution of the residue. It was pointed out that a Federal equity court had the power to decree proprotionate contribution from all the beneficiaries to the fund, the obligations and expenses sustained by one of them. The parallel with this case and the one at bar is apparent. The Noel Estate, Inc., a minority stockholder of a national bank in voluntary liqui-

dation, sought to create credits and recover funds against another national bank which had taken over, by contract, all assets and credits of the former bank. Both the District Court and the Court of Appeals found that the relationship which sprung from the contract between the two banks created a trust, the new bank holding the old's assets as pledgee and trustee, to liquidate the indebtedness due by the old and account for the use of its property, without undue profit. In *Commercial National Bank in Shreveport v. Parsons*, ets., 144 F (2nd) 231, at pages 240, 241, the Court held, in this main litigation:

> "All distinctions as to forms in the federal courts between actions at law and suits in equity have been abolished; but the difference in substance in federal judicial power between law and equity is embedded in the Constitution and remain unaltered. *Therefore, a civil action against a trustee to compel an accounting for trust funds, and for profits derived from the use or misuse of trust property, falls within the established equitable jurisdiction of the federal courts, and is governed by the maxims and principles of equity.*" (Emphasis added).

Since the main litigation was governed by said principles, the claims for services should, therefore, be tested by the maxims and principles of equity as established by the Federal Courts. The type of suit involved is controlling. *Guardian Trust Co. v. Kansas City Southern Ry. Co.*, 28 F (2nd) 233, 8th Circuit; covers accounting by trustee. *Kelbourn v. Sunderland*, 130 U. S. 505, 32 L ed 1005, 9 S. Ct. 594; Federal equity court not bound by State statutes or decisions, *Guffey v. Smith*, 237 US

101, 59 L ed 856; *Dodge v. Tulleys*, 144 U. S. 451, 36 L ed 501; *Sprague v. Ticonic National Bank*, 307 U. S. 161, 170, 83 L ed 1184, 59 S. Ct. 463. Henderson's and Roberts' activities were, in majority part, directly beneficial to all the shareholders, Roberts serving all the agents of the Appellee Bank and also agents of the Receiver, in an essential particular, supplying an integral part of the litigation, properly costs of suits, justifying recovery on a quantum meruit basis in equity or law (448-450). The decisions below ignored this point.

This Court has recognized the procedure in equity followed here, in *Winton v. Amos*, 255 U. S. 373, 65 L ed 684. Henderson, Roberts and the Attorneys could have made claim against Noel Estate, Inc., the stockholder, with whom they had immediate engagements, which in turn could have made claim for contribution on the basis of quantum meruit from his co-beneficiaries; however, in Federal equity practice, to avoid circuity, the claims may be made directly against the fund. It is also authority for payment of compensation for services before Congressional groups, without the necessity of litigation as a requisite of recovery, following the principles of the Greenough case, supra, and *Central Railroad & Banking Co. v. Pettus & Dawson*, 113 U. S. 116, 28 L ed 915.

Attorneys' fees and incidental costs, where the action is not protested by the corporation, or Receiver, the results obtained are favorable, a fund is recovered for the benefit of all the shareholders, or bondholders, have almost universally been allowed. *Buell v. Kanawha Lbr.*

Co., 201 Fed. 762; *Lamar, et al v. Hall & Wimberley*, 5th Cir., 129 Fed. 79; *Burden Central Sugar-Refining Co. v. Ferris Sugar-Mfg. Co., Ltd.*, 5th Cir. 87 Fed. 810; *McCourt, et al v. Singers-Biggers*, 145 Fed. 103; *Cooley v. Wolcott*, 187 Fed. 595; *Mecartney v. Guardian Trust Co., et al.*, 280 Fed. 64; *Hutchinson Box Board & Paper Co. v. Van Horn*, 299 Fed. 424; *Marchant v. Lyles*, 85 F (2nd) 997, 4th Cir.; *Louisville, E. & St. L. Ry. Co. v. Wilson*, 138 U. S. 501, 34 L ed 1023.

The formalities of the litigation are immaterial, if for all practical purposes one has created a fund, or benefit, at his own expense, in which others will participate, they should share their pro rata part of the costs and expenses, this Court held in *Sprague v. Ticonic National Bank*, 307 U. S. 161, supra, Justice Frankfurter, as organ, exhaustively citing authorities.

Alternatively, we contend that since the corporate entity was not dissolved by the voluntary receivership, it was subject to all general laws of estoppel, implied contract, acquiescence and ratification, in all acts which did not interfere with the official functions of the Receiver (588 L 1-20); *Chemical National Bank v. Hartford Deposit Co.*, 161 U. S. 1, 10, 40 L ed 595; *Creswell v. Lanahan*, 101 U. S. 347, 25 L ed 853; *Bostwick v. Mutual Life Ins. Co.*, 5th Cir., 251 Fed. 36; *Pittsburgh, C & St. L. Ry. Co. v. Keokuk & Hamilton Bridge Co.*, 131 U. S. 371 33 L ed 157. The fact that one is a stockholder of a cor-

poration does not preclude him from recovering from it for services either upon an express or implied contract. 13 Fletcher, Cyclopedia Corporations, Per, Ed., 1943 Rev. Vol. Sec. 5733, citing *Montana Tonopak Mining Co. v. Dunlap*, 196 Fed. 612. See, specifically, *Fitzgerald & Malloy v. Fitzgerald*, 137 U. S. 98, 34 L ed 608.

Noel Estate, Inc., expended over $6,000.00 for purposes of all the stockholders' benefit, through an agreement with Henderson; expended over $30,000.00, financing Roberts' activities to enable him to continue in the investigation, and litigation, which enured admittedly to the benefit of all shareholders. Through these and other agents, it can directly point to an additional $15,000.00 for distribution to all beneficiaries of Appellee Bank; to $356,829.53, from a source solely discovered by Roberts, hence in equity, reasonable allowances should be made to extend established principles to this case, or a New Trial granted.

The complaints of James Noel, a layman, on the conduct of the trial and his serious disagreement with counsel during the Judge's absence, is addressed to the discretion of the Court. We think the complaints are fundamental and strikes at the heart of our judicial system, and should be corrected. (R 605, et seq.)

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition should be granted.

CHARLES L. BARNETT
Attorney for Petitioners
Ward Building
Shreveport, Louisiana

Other Counsel:

FREDERICK J. STEWART
Ward Building
Shreveport, Louisiana

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JUDGMENT

Extract from the Minutes of February 18, 1955.

NOEL ESTATE, INCORPORATED, and
THOMAS G. ROBERTS, Claimant,

No. 15028. *versus*

JAMES R. RUSSELL, Shareholders' Agent
of the Commercial National Bank of Shreveport.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Noel Estate, Incorporated, and Thomas G. Roberts, Claimant, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

218 F (2nd) 958

(Title Omitted)

Feb. 18, 1955

Rehearing Denied April 6, 1955

BEFORE HOLMES and BORAH,
Circuit Judges.

PER CURIAM:

The judgment appealed from is affirmed.